

By: Senator(s) Gollott, Hewes, Carmichael,
Davis, Dearing, Jackson (15th), Lee (35th),
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To: Judiciary, Division A

SENATE BILL NO. 2265
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE DEFINITIONS UNDER THE TORT CLAIMS ACT; TO AMEND SECTION
3 11-46-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THE SAME IMMUNITY
4 FOR LAW ENFORCEMENT OFFICERS ESCORTING A FUNERAL PROCESSION AS THE
5 OFFICER WOULD POSSESS WHILE IN THE PERFORMANCE OF OFFICIAL DUTY;
6 AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 11-46-1, Mississippi Code of 1972, is
9 amended as follows:

10 11-46-1. As used in this chapter, the following terms shall
11 have the meanings herein ascribed unless the context otherwise
12 requires:

13 (a) "Claim" means any demand to recover damages from a
14 governmental entity as compensation for injuries.

15 (b) "Claimant" means any person seeking compensation
16 under the provisions of this chapter, whether by administrative
17 remedy or through the courts.

18 (c) "Board" means the Mississippi Tort Claims Board.

19 (d) "Department" means the Department of Finance and
20 Administration.

21 (e) "Director" means the executive director of the
22 department who is also the executive director of the board.

23 (f) "Employee" means any officer, employee or servant
24 of the State of Mississippi or a political subdivision of the
25 state, including elected or appointed officials and persons acting
26 on behalf of the state or a political subdivision in any official
27 capacity, temporarily or permanently, in the service of the state
28 or a political subdivision whether with or without compensation.

29 The term "employee" shall not mean a person or other legal entity

30 while acting in the capacity of an independent contractor under
31 contract to the state or a political subdivision; provided,
32 however, that for purposes of the limits of liability provided for
33 in Section 11-46-15, the term "employee" shall include physicians
34 under contract to provide health services with the State Board of
35 Health, the State Board of Mental Health or any county or
36 municipal jail facility while rendering services under such
37 contract. The term "employee" shall also include any physician,
38 dentist or other health care practitioner employed by the
39 University of Mississippi Medical Center (UMMC) and its
40 departmental practice plans who is a faculty member and provides
41 health care services only for patients at UMMC or its affiliated
42 practice sites. The term "employee" shall also include any
43 physician, dentist or other health care practitioner employed by
44 any university under the control of the Board of Trustees of State
45 Institutions of Higher Learning who practices only on the campus
46 of any university under the control of the Board of Trustees of
47 State Institutions of Higher Learning. The term "employee" shall
48 also include any physician, dentist or other health care
49 practitioner employed by the State Veterans Affairs Board and who
50 provides health care services for patients for the State Veterans
51 Affairs Board. The term "employee" shall also include Mississippi
52 Department of Human Services licensed foster parents for the
53 limited purposes of coverage under the Tort Claims Act as provided
54 in Section 11-46-8.

55 (g) "Funeral procession" means an array of motor
56 vehicles in which the lead vehicle is either a state or local law
57 enforcement vehicle that is operating its headlights or another
58 vehicle that displays a sign, pennant, flag or other insignia
59 furnished by a funeral home indicating a funeral procession.

60 (h) "Governmental entity" means and includes the state
61 and political subdivisions as herein defined.

62 (i) "Injury" means death, injury to a person, damage to
63 or loss of property or any other injury that a person may suffer
64 that is actionable at law or in equity.

65 (j) "Political subdivision" means any body politic or
66 body corporate other than the state responsible for governmental
67 activities only in geographic areas smaller than that of the
68 state, including, but not limited to, any county, municipality,
69 school district, community hospital as defined in Section
70 41-13-10, Mississippi Code of 1972, airport authority or other
71 instrumentality thereof, whether or not such body or
72 instrumentality thereof has the authority to levy taxes or to sue
73 or be sued in its own name.

74 (k) "State" means the State of Mississippi and any
75 office, department, agency, division, bureau, commission, board,
76 institution, hospital, college, university, airport authority or
77 other instrumentality thereof, whether or not such body or
78 instrumentality thereof has the authority to levy taxes or to sue
79 or be sued in its own name.

80 (l) "Law" means all species of law, including, but not
81 limited to, any and all constitutions, statutes, case law, common
82 law, customary law, court order, court rule, court decision, court
83 opinion, court judgment or mandate, administrative rule or
84 regulation, executive order, or principle or rule of equity.

85 **SECTION 2.** Section 11-46-9, Mississippi Code of 1972, is
86 amended as follows:

87 11-46-9. (1) A governmental entity and its employees acting
88 within the course and scope of their employment or duties shall
89 not be liable for any claim:

90 (a) Arising out of a legislative or judicial action or
91 inaction, or administrative action or inaction of a legislative or
92 judicial nature;

93 (b) Arising out of any act or omission of an employee
94 of a governmental entity exercising ordinary care in reliance

95 upon, or in the execution or performance of, or in the failure to
96 execute or perform, a statute, ordinance or regulation, whether or
97 not the statute, ordinance or regulation be valid;

98 (c) Arising out of any act or omission of an employee
99 of a governmental entity engaged in the performance or execution
100 of duties or activities relating to police or fire protection or
101 who is an on- or off-duty law enforcement officer directing or
102 escorting a funeral procession unless the employee acted in
103 reckless disregard of the safety and well-being of any person not
104 engaged in criminal activity at the time of injury;

105 (d) Based upon the exercise or performance or the
106 failure to exercise or perform a discretionary function or duty on
107 the part of a governmental entity or employee thereof, whether or
108 not the discretion be abused;

109 (e) Arising out of an injury caused by adopting or
110 failing to adopt a statute, ordinance or regulation;

111 (f) Which is limited or barred by the provisions of any
112 other law;

113 (g) Arising out of the exercise of discretion in
114 determining whether or not to seek or provide the resources
115 necessary for the purchase of equipment, the construction or
116 maintenance of facilities, the hiring of personnel and, in
117 general, the provision of adequate governmental services;

118 (h) Arising out of the issuance, denial, suspension or
119 revocation of, or the failure or refusal to issue, deny, suspend
120 or revoke any privilege, ticket, pass, permit, license,
121 certificate, approval, order or similar authorization where the
122 governmental entity or its employee is authorized by law to
123 determine whether or not such authorization should be issued,
124 denied, suspended or revoked unless such issuance, denial,
125 suspension or revocation, or failure or refusal thereof, is of a
126 malicious or arbitrary and capricious nature;

127 (i) Arising out of the assessment or collection of any
128 tax or fee;

129 (j) Arising out of the detention of any goods or
130 merchandise by any law enforcement officer, unless such detention
131 is of a malicious or arbitrary and capricious nature;

132 (k) Arising out of the imposition or establishment of a
133 quarantine, whether such quarantine relates to persons or
134 property;

135 (l) Of any claimant who is an employee of a
136 governmental entity and whose injury is covered by the Workers'
137 Compensation Law of this state by benefits furnished by the
138 governmental entity by which he is employed;

139 (m) Of any claimant who at the time the claim arises is
140 an inmate of any detention center, jail, workhouse, penal farm,
141 penitentiary or other such institution, regardless of whether such
142 claimant is or is not an inmate of any detention center, jail,
143 workhouse, penal farm, penitentiary or other such institution when
144 the claim is filed;

145 (n) Arising out of any work performed by a person
146 convicted of a crime when the work is performed pursuant to any
147 sentence or order of any court or pursuant to laws of the State of
148 Mississippi authorizing or requiring such work;

149 (o) Under circumstances where liability has been or is
150 hereafter assumed by the United States, to the extent of such
151 assumption of liability, including, but not limited to, any claim
152 based on activities of the Mississippi National Guard when such
153 claim is cognizable under the National Guard Tort Claims Act of
154 the United States, 32 USC 715 (32 USCS 715), or when such claim
155 accrues as a result of active federal service or state service at
156 the call of the Governor for quelling riots and civil
157 disturbances;

158 (p) Arising out of a plan or design for construction or
159 improvements to public property, including, but not limited to,

160 public buildings, highways, roads, streets, bridges, levees,
161 dikes, dams, impoundments, drainage channels, diversion channels,
162 harbors, ports, wharfs or docks, where such plan or design has
163 been approved in advance of the construction or improvement by the
164 legislative body or governing authority of a governmental entity
165 or by some other body or administrative agency, exercising
166 discretion by authority to give such approval, and where such plan
167 or design is in conformity with engineering or design standards in
168 effect at the time of preparation of the plan or design;

169 (q) Arising out of an injury caused solely by the
170 effect of weather conditions on the use of streets and highways;

171 (r) Arising out of the lack of adequate personnel or
172 facilities at a state hospital or state corrections facility if
173 reasonable use of available appropriations has been made to
174 provide such personnel or facilities;

175 (s) Arising out of loss, damage or destruction of
176 property of a patient or inmate of a state institution;

177 (t) Arising out of any loss of benefits or compensation
178 due under a program of public assistance or public welfare;

179 (u) Arising out of or resulting from riots, unlawful
180 assemblies, unlawful public demonstrations, mob violence or civil
181 disturbances;

182 (v) Arising out of an injury caused by a dangerous
183 condition on property of the governmental entity that was not
184 caused by the negligent or other wrongful conduct of an employee
185 of the governmental entity or of which the governmental entity did
186 not have notice, either actual or constructive, and adequate
187 opportunity to protect or warn against; provided, however, that a
188 governmental entity shall not be liable for the failure to warn of
189 a dangerous condition which is obvious to one exercising due care;

190 (w) Arising out of the absence, condition, malfunction
191 or removal by third parties of any sign, signal, warning device,
192 illumination device, guardrail or median barrier, unless the

193 absence, condition, malfunction or removal is not corrected by the
194 governmental entity responsible for its maintenance within a
195 reasonable time after actual or constructive notice; or

196 (x) Arising out of the administration of corporal
197 punishment or the taking of any action to maintain control and
198 discipline of students, as defined in Section 37-11-57, by a
199 teacher, assistant teacher, principal or assistant principal of a
200 public school district in the state unless the teacher, assistant
201 teacher, principal or assistant principal acted in bad faith or
202 with malicious purpose or in a manner exhibiting a wanton and
203 willful disregard of human rights or safety.

204 (2) A governmental entity shall also not be liable for any
205 claim where the governmental entity:

206 (a) Is inactive and dormant;

207 (b) Receives no revenue;

208 (c) Has no employees; and

209 (d) Owns no property.

210 (3) If a governmental entity exempt from liability by
211 subsection (2) becomes active, receives income, hires employees or
212 acquires any property, such governmental entity shall no longer be
213 exempt from liability as provided in subsection (2) and shall be
214 subject to the provisions of this chapter.

215 **SECTION 3.** This act shall take effect and be in force from
216 and after July 1, 2007.